..

**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.**

**F.A.O. No. 1303 of 2000 (O&M)**
Date of Decision : March 14, 2007

C.W.E. Air Force and another

... Appellants

Versus

The Commissioner and another

.. Respondents

**CORAM : Hon`ble Mr. Justice Pritam Pal.**

Present : Shri G.S.Bal, Advocate,
for the appellants.

Shri I.S.Sidhu, Advocate,
for respondent No.2 (contesting respondent).

**PRITAM PAL , J.**

This appeal, by C.W.E. Air Force and another, (employer in this case – hereinafter referred to as "the appellants"), is directed against the judgment dated 30.11.1999 passed by the learned Commissioner under the Workmen's Compensation Act, 1923 (hereinafter referred to as "the Act"), whereby a total compensation of Rs. 1,63,070/- along with interest at the rate of 12 per cent per annum, was awarded to respondent No.2 (hereinafter referred to as "the contesting respondent"), on account of death of her husband, Nirmal Dev Sharma.

..

In nutshell, facts culminating to the commencement of this appeal may be recapitulated thus:

Smt. Saroj Sharma (contesting respondent), widow of deceased Nirmal Dev Sharma, filed an application before the learned Commissioner seeking compensation on account of death of her husband, who was working as a Pump Operator with the appellants. On 26.4.1998, at about 10.30 AM, while the deceased was on duty at Tubewell No. 16, he was seen lying unconscious near the said tubewell by AW-2, Satpal. Thereafter, he (deceased) was removed to Madhukar Bharti Hospital, Ambala Cantt, where he was declared "brought dead". The age of the deceased was 47 years, at the time of his death and his monthly income has been given as Rs. 4,000/- per month.

Upon notice given by the learned Commissioner, none had appeared on behalf of the appellants-employer of the deceased. Hence, they were proceeded against *ex-parte* vide order dated 5.10.1999. In the ex-parte evidence, Saroj Sharma, widow of the deceased appeared as AW-1. She also produced on record a copy of the log sheet as Ex. A1, which indicates that on 26.4.1998, i.e. the fateful day, the deceased was on duty from 6.00 AM to 2.00 PM. Further, she also placed on record a medical certificate dated 26.4.1998, issued by the aforesaid hospital, as Ex.A2, which indicates that Nirmal Dev Sharma was brought dead at 11.00 AM on the said date. She then examined Satpal as AW2, who also corroborated the averments contained in the application, moved by her.

After recording the aforesaid *ex-parte* evidence of respondent No.2 and hearing learned counsel appearing on her behalf, the learned Commissioner came to the conclusion that Nirmal Dev Sharma had died as

a result of accident, while on duty and in the employment of the appellants and at the same time, respondent No.2 being widow of the deceased was held entitled to a total compensation of Rs.1,63,070/- alongwith interest, as mentioned in the opening paragraph of this judgment. This is how feeling aggrieved, the appellants have come up in this appeal.

I have heard learned counsel for the parties at length and gone through the record of this case carefully.

The sole point of argument, raised on behalf of the appellants, is that here in the instant case, there is no casual connection between the employment of the deceased and cause of his death. Moreover, there was also not any physical or occupational injury on the person of the deceased. In such a situation, respondent No.2, who is a widow of the deceased, is not entitled to any compensation. In support of his this contention, reliance has also been placed on the decision of Hon`ble Himachal Pradesh High Court, Shimla, in **Leela Devi and another v. Ram Lal Rahu and another** ***1990 ACJ 431.***

On the other hand, learned counsel for the contesting respondent has repelled the aforesaid point of argument and submitted that in view of the nature of job of Pump Operator, the deceased might have fallen-down in a state of unconsciousness, near the tube-well, due to an electric shock. In such a situation, it was not necessary that the deceased would have any kind of physical or occupational visible injury on his person. He then also submitted that there is no pre-history of any heart-ailment of the deceased. After putting-forth the aforesaid points of arguments, learned counsel for the contesting respondent submitted that no benefit can be derived from the observations made by His Lordship in the

..

case of ***Leela Devi and another*** (supra).

I have given my thoughtful consideration to the rival contentions, put-forth on behalf of the parties.

Before I proceed further, it is pertinent to observe here that we are to appreciate the contention of learned counsel for the appellants in the back-drop of the legislation of the Act. The object behind the legislation being protection to the weaker section with a view to do social justice, the provisions of the Act have to be interpreted liberally, so that other things being equal, the leaning of the court has to be towards the person for whose benefit the legislation is made. Bearing this principle in mind, the expression "accident" found in sub-section (1) of Section 3 of the Act, has to be understood as meaning a "mishap" or "untoward event not expected or designed". In other words, the basic and indispensable ingredient of the accident is the un-expectation.

In the case in hand, it goes unrebutted on the file that Nirmal Dev Singh (deceased) was seen lying unconscious near the tube-well, which was being operated by him with the help of electric power. From there, he was straightway taken to the Madhukar Bharti Hospital, Ambala Cantt, where he was declared "brought dead". It is further an admitted fact that the deceased had died during the course of his employment with the appellants. No doubt, there was no physical or occupational visible injury on the person of the deceased, but in the given facts and circumstances, there is every probability and high-degree of expectation of this mishap due to an electric shock, as argued by learned counsel for the contesting respondent. The deceased was also not having pre-history of heart-ailment or any other natural disease. The deceased was a young-man of 47

..

years. In these given facts and circumstances, it can be safely inferred that in the instant case, there is certainly an element of casual connection between the employment of the deceased and cause of his death.

I have also gone through the facts of the above cited ruling in the case of ***Leela Devi and another*** and find that the facts contained therein are quite at variance from the facts of the case in hand, because in the instant case, the job of the deceased-workman was to operate the tube-well with the help of electric power, whereas, in the above cited case, the workman was employed as a Watchman, involving no risk of electric shock etc., as was in the case in hand.

In view of my foregoing discussion, the view taken by the learned Commissioner that the death of the workman was caused due to an accident, arising out of and in the course of his employment, is up-held. No interference is called for in the impugned judgment dated 30.11.1999. Consequently, this appeal is hereby dismissed. No costs.

**[ PRITAM PAL ]**

**March 14, 2007.** **JUDGE**

som